

VIA ELECTRONIC FILING

April 26, 2005

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket Nos. 04-36 – Proposed Kansas VoIP 911 Legislation

Dear Ms. Dortch:

Nuvio Corporation (“Nuvio”) writes this letter to call the Federal Communications Commission’s (“Commission”) attention to pending Kansas legislation that would unlawfully require providers of Voice over Internet Protocol (“VoIP”) services in Kansas to deliver and route emergency service calls – irrespective of whether or not such capability is available or otherwise feasible.¹ The legislation is scheduled for a vote on Wednesday, April 27, 2005, and, should it pass, will become law upon the Governor’s signature.

The imposition of state-by-state VoIP 911 regulation is cause for concern on multiple fronts. First, while such efforts are no-doubt well intentioned – legislation such as that proposed in Kansas clearly violates the FCC’s *Vonage*² and *Pulver*³ orders that sought to preempt state-by-state entry regulation of interstate VoIP services. Furthermore, because E-911/911 issues are explicitly before this Commission in the *IP-Enabled Services* proceeding inconsistent state regulation will actually result in complicating the nationwide deployment of VoIP E-911.⁴

¹ The language concerning the provision of emergency services by VoIP providers is contained in an amendment to House Bill 2026. Included as Attachment A is the amendment and as Attachment B a copy of House Bill 2026.

² See *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd. 22,404 (rel. Nov. 12, 2004) (“*Vonage Order*”).

³ *Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, 19 FCC Rcd 3307 (2004) (“*Pulver*”).

⁴ See *IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, ¶¶ 51-57 (rel. Mar. 10, 2004).

April 26, 2005

Page 2

Moreover, absent a clear interconnection right or other means to deliver E-911/911 calls through the ILEC selective routers, legislation such as that proposed in Kansas will result in VoIP providers stripping out emergency call functionality. Nuvio is committed to providing emergency services to its customers as quickly as technically possible. In fact, in approximately 30% of the nationwide rate centers where Nuvio has obtained telephone numbers through agreements with competitive local exchange carriers ("CLECs") the Company does provide E-911/911 functionality to many of its fixed business customers in a manner similar to that provided by wireline carriers. In Kansas, however, Nuvio cannot obtain such functionality statewide from the CLEC that provides service to the Company.⁵ Absent direct access to ILEC selective routers and associated databases, Nuvio's ability to provide such services is limited to what carriers offer the Company. Passing legislation that requires VoIP providers to deliver emergency calls to the appropriate PSAP dispatcher in the absence of requiring incumbents to open up access to emergency service trunking and databases is tantamount to forcing VoIP service providers to stop offering emergency services within Kansas.

The proposed Kansas legislation would frustrate federal law and policy by subjecting Nuvio and other providers of VoIP services to state entry regulation. Indeed, the legislation would actually discourage delivery of 911 services and erect entry barriers to those innovative VoIP providers that sought to make available such offerings. Instead, the proposed legislation imposes a draconian technical standard to which VoIP providers must adhere else risk prosecution. Accordingly, should the Kansas legislation become law, Kansas will have adopted E-911/911 requirements as a condition precedent to market entry in direct conflict with federal law and the FCC's *Vonage* order. Additionally, the legislation provides no details as to how VoIP providers are to determine whether they are subject to the legislation. VoIP providers like Nuvio provide a portable VoIP service that allow their customers to travel and utilize the service from any location where there is a broadband Internet connection. Nuvio cannot determine the location of its customers on the basis of the telephone numbers utilized, billing address, or the IP addresses associated with the service. Thus, even if the Company were to stop offering its service in Kansas due to the legislation, Nuvio could not ensure that one of its customers would not travel to Kansas, use the service, and subject Nuvio to prosecution.

⁵ The E-911 functionality provided by Nuvio is limited in certain respects. Specifically, the Company can only offer that capability for one location tied to the main number of that business. Additionally, Nuvio cannot offer the E-911 capability on numbers that are not assigned from the rate center associated with the geographic location of the Nuvio customer. This is due to limitations associated with the ILEC's selective router.

April 26, 2005

Page 3

In light of these concerns, Nuvio urges the Commission to adopt a federal policy concerning the delivery of VoIP emergency services and access to the E-911/911 infrastructure operated by the ILECs. This issue is already being considered by the Commission in the *IP-Enabled Services* proceeding and, in light of state activity, the Commission should segregate E-911/911 issues from the proceeding. Depending on what types of obligations the Commission determines are appropriate for VoIP providers, the Commission must also provide VoIP providers with a direct interconnection right to the emergency services network and related databases. Commission action is necessary to add certainty to the VoIP marketplace and to spur the consistent and organized deployment of advanced emergency services by VoIP providers. Failure to do so will result in the proliferation of well-intended but ill-advised legislation like that currently proposed in Kansas.⁶ While the Commission or a federal court would no doubt preempt the Kansas legislation, it is cold comfort to a company like Nuvio that would incur substantial expenses in securing such an order and at the same time expose itself to significant legal risks.

Respectfully submitted,

/s/

William B. Wilhelm, Jr.

Ronald W. Del Sesto, Jr.

Attorney for Nuvio Corporation

⁶ In fact, Illinois may also adopt similarly problematic legislation..